UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/AC.109/1193
23 May 1994

ORIGINAL: ENGLISH

SPECIAL COMMITTEE ON THE SITUATION
WITH REGARD TO THE IMPLEMENTATION OF
THE DECLARATION ON THE GRANTING OF
INDEPENDENCE TO COLONIAL COUNTRIES
AND PEOPLES

TOKELAU

Working paper prepared by the Secretariat

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TOKELAU 1/

I. GENERAL

1. Tokelau, a Non-Self-Governing Territory administered by New Zealand consists of three small atolls in the South Pacific (Nukunonu, 4.7 square kilometres; Fakaofo, 4.0 square kilometres; and Atafu, 3.5 square kilometres) with a total land area of approximately 12.2 square kilometres. Nukunonu, the central atoll, is 92 kilometres from Atafu and 64 kilometres from Fakaofo. Western Samoa, 480 kilometres to the south, is the nearest sizeable neighbour.

2. Tokelauans are Polynesians with linguistic, family and cultural links with Western Samoa. According to the 1991 census, the total population of Tokelau was 1,577, a decrease of 113 compared with 1986. There were 543 inhabitants on Atafu, 437 on Nukunonu and 597 on Fakaofo. The constraints of atoll life and limited opportunities have led some 3,000 Tokelauans to settle abroad, particularly in New Zealand and Western Samoa.

II. CONSTITUTIONAL AND POLITICAL DEVELOPMENTS

A. General

3. Tokelau is administered under the authority of the Tokelau Act, 1948, and its amendments. 2/ Tokelauans are New Zealand citizens under the provisions of the New Zealand Citizenship Act, 1977.

4. It will be recalled that under the Tokelau Act, the Minister for Foreign Affairs of New Zealand may appoint the Administrator of Tokelau for a three-year term. Mr. Lindsay Watt, the current Administrator, assumed office on 1 March 1993.

5. In 1993, the New Zealand Government replaced the Tokelau Administration Regulations, 1980, which had established the administrative authority for Tokelau, with the Tokelau Administration Regulations, 1993 (see para. 11 below). The new Regulations reflect the wish of Tokelau expressed in 1992 to move further towards self-government and a better definition and expansion of the role of its political institutions.

6. A new constitutional package has been put in place and, as of January 1994, the powers of the Administrator have been delegated to the General Fono (Council) and, when it is not in session, to the Council of Faipule (joint chairmen of the General Fono).

7. A related move is the transfer of the headquarters of the Tokelau public service from Apia to Tokelau.

B. Legislative developments

8. Tokelau's legislative system is based on the Tokelau Act, 1948, as amended. New Zealand statutes apply to Tokelau only where explicit reference is made to

the Territory and, in practice, no New Zealand legislation is extended to Tokelau without Tokelauan consent. The Governor-General of New Zealand is empowered to make regulations, as he sees fit, for the peace, order and good government of the Territory.

9. In the early 1980s, in response to a study that concluded that Tokelau lacked a coherent legal system and that major reform was needed, a Tokelau Law Project was undertaken, which is still continuing, funded by the Tokelau budget and the United Nations Development Programme (UNDP). The aim of the project is to create a body of law that will give due recognition to Tokelauan custom and grant legal authority to local institutions. The process involves ascertaining Tokelau's wishes through consultations between New Zealand and Tokelauan representatives, who have formed a special committee for the purpose.

10. The first amendment to Tokelau legislation resulting from the Law Project was the Tokelau Amendment Act, 1986. 3/

11. The Tokelau Administration Regulations, 1993, which came into force on 1 October 1993, allow the Administrator to delegate any or all of his or her powers to the General Fono or to the Council of Faipule or to any other person or persons, as he or she sees fit. The intention was that the Administrator's powers should be delegated to the General Fono or the Council of Faipule when the former was not in session (see paras. 20 and 21 below). Furthermore, and notwithstanding such delegations, the Administrator might still exercise any of his or her powers.

12. The annual report states that all laws or rules affecting Tokelau are now made either by the Tokelauans or at their request and with their consent.

13. All three atolls have statutory power to enact their own local laws.

Judiciary

14. The office of Law Commissioner was established by section 7 of the Tokelau Amendment Act, 1986. The office is a judicial one, held by a lay judge with limited jurisdiction in civil and criminal matters on his or her respective atoll. Since 1986 the office has been held by the faipule for each atoll. Under normal circumstances, however, the offices of faipule and Law Commissioner would be held by different persons.

15. Section 5 of the Tokelau Amendment Act provides that

> "the Governor-General on the recommendation of the Minister of Foreign Affairs and Trade made after consultation by the Minister with the Elders of the island concerned, may appoint any Tokelauan to be:
>
> (a) Commissioner for Atafu;
>
> (b) Commissioner for Fakaofo;

(c) Commissioner for Nukunonu."

On 15 February 1994, the appointees for the above posts were confirmed.

16. The current criminal law for Tokelau, as embodied in the Tokelau Crimes Regulations, 1975 and applicable acts of the New Zealand Parliament, has not been applied in practice. Acts punishable in Tokelau are that which correspond to offences in Tokelauan customs but not necessarily to acts described in the Crimes Regulations. Consequently, a new crime regulation system and related procedures have been developed and are awaiting promulgation. The purpose of the reform is to broaden the range of offences and sanctions covered by the Regulations to correspond to the expectations of Tokelauans and to fill the gaps in the present code in a manner consistent with obligations under international law concerning human rights applying to Tokelau.

17. The proposed list of crimes under the new Crimes Regulations is almost the same as that under the Tokelau Crimes Regulations, 1975. The offences, however, are presented coherently in a form appropriate to Tokelau's needs and customs. The new Regulations are aimed at simplifying greatly the law presently in force and excluding all those offences not relevant to specific Tokelauan circumstances. The new Regulations were prepared in consultation with Tokelauan elders, both individually in village councils and together in special law meetings.

C. Territorial government

18. The principal institution of government in Tokelau is the General Fono, which establishes policies for the administration of the Territory, takes decisions on the allocation of budgetary resources and makes policy decisions in all areas affecting Tokelauan life. The General Fono comprises nine representatives from each atoll chosen by its respective taupulega (Council of Elders). The three taupulega are presided over by the faipule, who are the three joint chairmen of the General Fono. No major policy question is approved by the Administrator or the Minister for Foreign Affairs without the endorsement of the General Fono.

19. In December 1992, the New Zealand Minister for External Relations and Trade announced that the time had come to delegate formally to Tokelau's political institutions New Zealand's authority for administration of the executive government of Tokelau. While New Zealand would retain authority to intervene, should the need arise, Tokelau had decided to establish a Council of Faipule to provide government when the General Fono was not in session. The Faipule would select one of their number to be a Ulu o Tokelau (titular leader of Tokelau) for a rotational term of one year. The Minister stated that Tokelau would therefore, for the first time have a recognized leader of government. 4/

20. On 27 January 1994, as a consequence of the new constitutional changes, the Administrator's powers were delegated to the General Fono and to the Council of Faipule. The framework for this measure is contained in the latter of understanding attached to the instrument of delegation (see annex I) which, on the one hand, defines Tokelau's obligation to keep the Administrator informed

about the administration of Tokelau and to consult him in specified areas before embarking on any action and, on the other, explains the Administrator's obligation to provide necessary information, advice and support.

21. The new delegation of the Administrator's powers signifies that the base of the Tokelauan Government is now located within Tokelau's own political institutions rather than within a public service located largely at Apia, as was the case previously. Under the new arrangements, the General Fono remains Tokelau's paramount political body. The key operational relationship, however, is that between the three faipule acting as ministers within the new executive agency, the Council of Faipule, and the senior staff of the public service. This has required a restructuring of the public service (see paras. 27 to 35 below).

Atoll government

22. On each of the three atolls, the principal organ of administration is the taupulega or Council of Elders. The two most important figures are the faipule and the pulenuku. The taupulega is composed differently on each atoll. On Atafu, the taupulega is composed of the head of each family group, together with the faipule and pulenuku. On Fakaofo, it comprises the faipule, the pulenuku and village elders. The taupulega of Nukunonu consists of elders and the nominated heads of extended families, the faipule and the pulenuku.

23. The pulenuku are equivalent to the village mayors. They are responsible for the day-to-day administration of village affairs, the scheduling of work, the supplying of water and, in some instances, the resolving of land disputes.

24. The faipule are joint chairmen of the General Fono and represent each atoll in its dealings with the Administrator. They preside at meetings of the respective taupulega. The faipule also represent Tokelau at regional meetings and conferences. The failantuhi (village clerks appointed by the taupulega of each atoll) keep records of meetings and transactions of the taupulega.

25. The faipule and pulenuku are elected by secret ballot and universal suffrage for three-year terms. At the last elections, held in January 1993, two new faipule were elected and one incumbent was returned to office. The newly elected officials belong to a younger generation, bringing fresh ideas as they assume new and increased responsibilities.

26. The delegation of power which took place on 27 January 1994 provides for the first time a formal framework within which New Zealand can work with the General Fono and the Council of Faipule to secure the best advancement of Tokelau's interests, as Tokelau itself defines these interests. At the time of the delegation of power, the General Fono was in session and the news was received with a strong sense of the importance of the occasion. Faipule Keli Neemia, the new installed Ulu o Tokelau for 1994, wrote that Tokelau was taking on the new challenge of "answering to no others but itself".

D. Public service

27. The Tokelau Public Service is composed of departments of Administration and Finance, Health and Environment, Education, Agriculture and Fisheries, Public Works, Transport and Communications, and Office of the Council of Faipule.

28. In December 1992, the New Zealand Minister for External Relations and Trade announced that the Fono had asked the New Zealand State Services Commissioner to delegate his existing responsibility for the Tokelau Public Service to qualified persons from Tokelau and New Zealand in order to give Tokelauans a more direct say in how their public service is run. The Minister understood that the State Services Commissioner was prepared to do so on the assumption that the apolitical nature of the public service and other essential standards would be maintained. 4/

29. At that time the Minister indicated that there would be significant changes in the structure of the Tokelau Public Service that would take into account the political developments taking place, including the transfer of the headquarters of the government departments from Apia to Tokelau and the establishment of a Tokelau Liaison Office at Apia.

30. In August 1993, the General Fono appointed Feleti Lopa as Tokelau Public Service Commissioner, serving as counterpart to Michael Collins, former Chief Executive of the New Zealand Department of Scientific and Industrial Research. Another important change in this sector took place on 10 June 1993 when the New Zealand State Services Commissioner delegated his powers as the employing authority of the Tokelau Public Service to two Tokelau Public Service Commissioners.

31. Following the decision by which the three faipule began acting as ministers (see para. 21 above), the public service was restructured accordingly and the department directors were ordered to report directly to the faipule. As a consequence, the post of Official Secretary has been abolished and senior personnel have been relocated to the atolls.

32. In August 1993, the Tokelau Public Service Commissioners announced the appointment of Falani Aukuso as Director of the new Office of the Council of Faipule. The Manager of the Tokelau Apia Liaison Office (TALO), which replaces the larger Office for Tokelau Affairs at Apia, reports to the Office of the Council of Faipule. TALO also provides support, as required, to the other departments on the atolls.

33. The changed situation of the Tokelau Public Service has enabled a group of New Zealand-based Tokelauans with extensive experience in public service to return to the Territory.

34. According to the administering Power, the General Fono will meet in June 1994 at which time the final decision on the allocation of departments will be made. Pending that decision, the Council of Faipule agreed in early April 1994 that faipule on an interim basis should assume ministerial responsibility for departments. On 26 April 1994, the Council of Faipule made a statement to confirm this arrangement (see annex II).

35. In the restructured public service, responsibility for providing certain basic services was transferred to the village councils (taupulega), thereby reducing the number of employees in the public service. In 1992, 199 persons (permanent and temporary) were employed. At 30 June 1993, there were 165 employees (133 permanent and 32 temporary); at 1 March 1994, there were 159 employees (123 permanent and 36 temporary); and by 7 July 1994, there will be 139 employees (107 permanent and 32 temporary).

E. Future status of the Territory

36. The Government of New Zealand is committed to assisting Tokelau attain a greater degree of self-government and economic self-sufficiency. While no timetable has been set, the New Zealand Government has regularly reminded the representatives of Tokelau of the desirability of continued progress towards self-government. It is the stated intention of the administering Power, however, to be guided by the wishes of the Tokelauan people.

37. The New Zealand Minister for External Relations and Trade noted in December 1992 that the people of Tokelau had been managing their own affairs to a great extent for some years, but that both they and the New Zealand Government had concluded that the time had come to delegate formally to Tokelau's political institutions the authority New Zealand held for administration of the executive government of Tokelau.

38. The Minister considered this involvement would give the people of Tokelau a greater capacity to govern themselves and confidence in doing so. Both parties had recognized, however, that given Tokelau's size, extreme isolation and lack of human and other resources, it would be premature at that stage for Tokelau to assume full self-government and for New Zealand to relinquish its responsibility for Tokelau.

39. The people of Tokelau have repeatedly expressed the desire to retain their special relationship with New Zealand on 25 May 1993. At the 669th meeting of the Subcommittee on Small Territories, Petitions, Information and Assistance, the representative of New Zealand delivered a message on behalf of the three faipule. According to the message, Tokelau was continuing its efforts to strengthen the role of its local institutions and to assume more responsibility for its own affairs. Tokelau was moving through a period of unprecedented political and administrative change. In that regard, the message made reference to the Council of Faipule which would provide government when the General Fono was not in session (see para 19 below). The discussions held by the Council of Faipule with the New Zealand Government during a visit to New Zealand in May 1993 served to confirm the Council's view that:

(a) The political changes had long been due and that Tokelau accepted the responsibility that came with it;

(b) It was necessary for Tokelau to take a step-by-step approach, using the present term of the Council of Faipule (1993-1995) as a period of consolidation;

(c) A period of consolidation was needed for the general reason that the people of Tokelau must understand and acknowledge the process of taking on the business of governing, and for the particular reason that the changes must be adapted to suit the situation of Tokelau. The changes therefor must be seen to be in accordance with the wishes of the people of Tokelau, besides New Zealand; at the same time, the search for that which is uniquely Tokelauan must continue.

40. The message, in summary, stated that the Council of Faipule assured the Special Committee of Tokelau's wish to shoulder the new responsibilities, to allow its political institutions, old and new, to gain experience in their new roles and to develop the confidence to find uniquely Tokelauan solutions to the issues of the day. Equally, Tokelau treasured its relationship with New Zealand and appreciated New Zealand's willingness to allow Tokelau to continue the process of political development in its own way and at its own pace. Tokelau hoped for a similar understanding from the Special Committee.

41. The message concluded with a confirmation of the invitation for the visiting mission from the Special Committee to visit Tokelau. This would provide an invaluable opportunity for the mission to be briefed on Tokelau's current situation and for the Territory to receive the Committee's advice.

III. ECONOMIC CONDITIONS

A. General

42. The economy of Tokelau is basically at a subsistence level. Its further development is limited by the Territory's lack of top soil and land-based resources, its small size and isolation. Apart from the salaries of public service employees, the main sources of income are sales of copra, stamps, souvenir coins and handicrafts and remittances from Tokelauans resident abroad, mainly in New Zealand. Most of the funds for Tokelau's imports of goods and services come from assistance provided by the administering Power.

43. There are cooperative stores on each atoll which carry basic supplies. The Tokelau Public Service Administration works closely with the Store Committee on each atoll to improve the management of the stores and to reduce the cost of goods. An increasing percentage of the goods now sold in Tokelau is imported directly from manufacturers in New Zealand, Australia and Fiji, rather than purchased through wholesale outlets at Apia.

B. Public finance

44. Tokelau's public revenue comes from New Zealand budgetary support and from various local charges, sales and fees. Total budgetary support, special grants, development assistance and disaster relief totalled $NZ 4.5 million 5/ in 1992/93, compared with $NZ 4.3 million during the previous year. Additional revenue of $NZ 759,362 was generated in Tokelau by shipping charges, sales of postage stamps, handicrafts and coins, customs duties and exclusive economic zone fees. These revenues cover recurrent local costs. Tokelau is responsible

for managing and spending these funds. A comprehensive review of the Tokelau public service financial and accounting systems was completed in November 1993.

C. Development assistance

45. The two principal goals of Tokelau's development strategy are to develop the transport/communications system and to enhance and supplement the existing subsistence lifestyle. In its current annual report, the administering Power states that its development assistance programme with Tokelau endeavours to address both areas of need. Unlike budgetary support, project assistance is intended to assist development activities rather than meet recurrent costs.

46. In addition to New Zealand, various international agencies also gave assistance to Tokelau. UNDP was the largest donor after New Zealand. The planning figure for 1993-1996 was US$ 1.197 million, the bulk of which was set aside for improving Tokelau's telecommunications. UNDP also continued to assist with the upgrading of Tokelau's power and water supplies and the construction of sea walls. In addition, it provided three volunteers to Tokelau, 6/ and facilitated the appointment for 12 months of a Tokelau Public Service Transition Manager.

47. Other international or multilateral donors to Tokelau included the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the International Telecommunication Union (ITU), the World Meteorological Organization (WMO), the South Pacific Commission (SPC), the South Pacific Environmental Programme and the Forum Fisheries Agency (FFA).

D. Agriculture, livestock and fisheries

48. Practically all land is held by customary title in accordance with the customs and usages of the inhabitants. The Tokelau Amendment Act, 1967, provides that the people of Tokelau may dispose of their land among themselves according to their customs, but they may not alienate land by sale or gift to non-indigenous inhabitants. Land holdings pass from generation to generation within the families, and are the privilege of the head of the family group. Some land is held in common.

49. Because of Tokelau's sandy surface cover, vegetation has traditionally been limited to the coconut palm and breadfruit, supplemented by pulaka and taamu (two types of taro), papaya and the fruit of the edible pandanus. Colocasia esculanta, another type of taro common to volcanic countries, and some varieties of bananas were successfully introduced on Nukunonu and Fakaofo.

50. Replanting and rehabilitation of coconut and breadfruit trees continue to provide the thrust in agricultural development. A few motu (islets) have been completely replanted. A successful vegetable-growing scheme, initiated with financial assistance from UNDP and technical advice from SPC, has been extended to Nukunonu and Atafu. A project aimed at developing root crops will also be extended to these two atolls.

51. In order to protect the crops, strict control measures have been undertaken over the importation of agricultural products from Western Samoa following the outbreak of taro blight there. Control programmes for rats and rhinoceros beetles continue, with increased effort being made to reduce the quantity of chemicals used.

52. Tokelau's livestock now comprises pigs, fowl and ducks. Attempts to improve the local swine breed have achieved positive results.

53. Ocean, lagoon and shellfish are plentiful and are a main constituent of the diet. The most common species of fish caught are tuna, skipjack and mullet. UNDP has provided fish-aggregating devices to help increase catches in waters around each atoll. Under an agreement between the United States of America and the States members of FFA, the American Tuna Fish Association (ATFA) is allowed to fish in the exclusive economic zones of the region in exchange for the payment of fees. Whether or not United States ships actually fish in the waters of Tokelau's exclusive economic zone, the Territory is entitled to assistance for economic development from ATFA by virtue of its being a beneficiary of the agreement to which New Zealand is a signatory. A fish-processing plant has been operating on Atafu since October 1990, funded by the FFA-United States Tuna Treaty. The plan processes fresh tuna into marinated, sun-dried tuna flakes.

54. Surveys of trochus stocks on Fakaofo have revealed that the replenishment programme on that atoll has been successful. During the period under review, stocks were replenished with specimens from the Cook Islands and the project was extended to cover Nukunonu and Atafu.

E. Transport and communications

55. Given its extreme isolation, Tokelau is heavily dependent for its contact with the outside world on effective shipping and telecommunications services. The most recent report of the administering Power states that at present, unfortunately, neither service is satisfactory.

56. Tokelau continues to rely on shipping services for all transportation, including passengers, cargo and mail. While the shipping link between Apia and the atolls has yet to be placed on a satisfactory longer-term basis, the monthly service was provided by MV Wairua, owned by a Fiji-based shipping company, and, from April 1993, by the Western Samoan Shipping Corporation's ferry, MV Queen Salamasina.

57. In its current annual report, the administering Power states that telecommunication problems continued to be a major focus during the period under review. The establishment of a satellite-based telecommunication service, which is expected to become operational in 1995 at a cost $NZ 2 to 3 million, was a major pending issue. The General Fono in February 1993 decided to allocate to the project part of the $NZ 1 million plus special revenue received under the treaty on tuna fishing between the Pacific Island States and the United States. The larger share for the financing of this project will come from United Nations sources and from New Zealand overseas development project assistance.

F. Public works

58. During the period under review, various public work projects were carried out on the three atolls, including repairs to sea walls and buildings damaged by cyclone Val. A number of projects were completed.

59. In addition, a new power house was under construction on Nukunonu, and, on Atafu, a new septic tank for the hospital and a new meeting house were under construction.

G. Energy

60. All three atolls are provided with UNDP-funded 36 KVA diesel generators to improve their electricity power supplies. New cables were laid to replace old wires and new pillar boxes were connected. Household metres were installed in each home. A new 41 KVA alternator has been purchased for Nukunonu, and a 31 KVA alternator for Atafu. UNDP continues to assist with the improvement of electricity supply on the atolls. Cables damaged by cyclone Val have been repaired.

H. Banking and credit

61. New Zealand currency and the Tokelau souvenir coin are legal tender in Tokelau.

I. Stamps

62. During the period under review, the General Fono decided to transfer all Tokelau stamp sales to the Tokelau Philatelic Bureau, located at Wellington, thus enabling collectors to contact the Bureau more readily. This function was previously carried out by the Office for Tokelau Affairs at Apia. In conjunction with this transfer, a stamp-dealing company was appointed Manager of the Bureau. This agreement came into effect in May 1993 when the faipule were in New Zealand.

IV. SOCIAL CONDITIONS

A. Health and social services

63. Each of the three atolls has a hospital equipped with ample supplies of medicine and medical and surgical instruments. Critical or difficult cases were referred to Western Samoa or New Zealand for treatment.

64. To assist in the reorganization of the health service, the Health and Environment Department is expected to relocate to the atolls. The focus is on developing an improved secondary level of health provision, establishing a diagnostic unit, upgrading facilities for curative medicine and establishing a unit of preventive medicine. WHO is providing an X-ray unit as a component of

the diagnostic unit, as well as funding for the training of a theatre nurse. This training will strengthen the curative medicine sector.

65. Tokelau became an associate member of WHO in May 1991. The WHO country programme for Tokelau for the biennium 1992-1993 provides for training of a medical graduate in Fiji, training of a theatre nurse, post-graduate studies in tropical health for one medical officer and the training of a public health nurse. The programme also provides for basic dental equipment associated with the centralization of selected services.

66. The United Nations Population Fund (UNFPA) has approved a three-year programme for Tokelau, beginning in 1992. Provision has been made for the establishment of a maternal and child health programme and a family planning programme; and for the supply of basic equipment, as well as family planning devices and pharmaceuticals. As part of the training component, staff nurses will undertake post-graduate training in midwifery, and on-the-job training of local staff nurses will be undertaken by a United Nations Volunteer medical officer. New Zealand has supported the establishment of a health education programme through the funding of audio-visual equipment and the training of a health education officer.

B. Labour and employment

67. Copra production and the manufacture of handicrafts are the only industries of significance in Tokelau. Most labour is devoted to the procuring of food from lagoons, the ocean or plantations; to the maintenance of villages; and to the production of handicrafts. Various public works and agriculture programmes and projects also provide employment. All paid-worker positions are rotated to distribute public service wages more widely throughout the community. Some work is carried out under contract by the village labour forces.

C. Crime prevention

68. It is anticipated that a training programme for law commissioners, police officers and others associated with the administration of justice in Tokelau will take place in late 1994. The programme will deal with the general structures and processes for the administration of law on Tokelau, specifically criminal law and court procedures. A handbook is being prepared to supplement the programme. These activities are being planned in anticipation of the early promulgation by the New Zealand Government of the Tokelau Crimes, Procedure and Evidence Regulations (see paras. 14 to 17 above).

D. Environment

69. Since the 1992 United Nations Conference on Environment and Development (UNCED) considerable focus has been placed on the environment, especially by the small island developing States. In Tokelau, a two-year National Environmental Management Strategy (1992-1994), funded by the South Pacific Regional Environment Programme (SPREP) and UNDP, is nearing completion. Stimulating

environmental awareness on each atoll, the project has made possible the introduction of waste management policies. It has also stimulated activity on the environmental health front, producing some changes in the importation of foods and household articles, and has helped in the consideration of wildlife conservation measures.

70. Upon completion of the programme, the Tokelau state of the environment report will be issued, which will be available for official and community consideration, in addition to a report on environmental proposals designed to move Tokelau through this decade to more sustainable practices.

71. In 1993, under the auspices of SPREP, Professor Tony Angelo, Director of the Tokelau Law Project, undertook, on a consultancy basis, an administrative, legislative and policy review to investigate ways of incorporating environmental legislation and policy into the existing procedures which currently apply in Tokelau.

72. The Environment Policy Unit, established in 1992 at the Office for Tokelau Affairs, was incorporated in 1993 into the new Health and Environment Department.

73. In a message to the Global Conference on the Sustainable Development of Small Island Developing States, held in Barbados in April/May 1994, the Elders of Tokelau stated that they needed to take stock of the changes in their surroundings, to assess whether they were good or bad, and to take appropriate measures to ensure that the same mistakes were not made in the future. Owing to the assistance of SPREP, Tokelau may well be on the road to attaining sustainable development or sustainable living. Many recent development projects had altered their lifestyles, health and behaviour. The recent Environmental Management Project had helped to focus on recent changes. Important decisions would have to be made which would help Tokelau reduce negative impacts on the people and their surrounding.

74. Tokelau's traditional knowledge and practices could not be replaced without seriously endangering the ability of 1,600 people to survive on the atolls. The Elders demanded, therefore, that only sustainable practices be employed. Tokelau was requesting the latest in sustainable technology, the kind of technology that was affordable and easily maintained and that would help to reduce the environmental impacts currently being reported in Tokelau.

V. EDUCATIONAL CONDITIONS

75. Each of the three atolls has modern and well equipped primary and secondary schools for children between the ages of 5 and 18 years. In 1987, a national form V class was introduced on Nukunonu. The class is open to students from the other two atolls who must board with Nukunonu families during the school year (the class was moved to Fakaofo in 1994). Education is free and school attendance is close to 100 per cent. There are also preschool classes in each village. Each school has a library which is also used by the local community.

76. Tokelau's teaching establishment comprises 45 qualified teachers and 6 teachers' aides. Each atoll has a parent-teacher association that helps to organize school activities. In 1992, areas for teaching were reviewed and those in which parents could become more involved were identified.

77. In the past, qualified students might take examinations for scholarships for further study in New Zealand upon completing form II. Under a new policy instituted in 1990, examinations were given at the form V level. It was considered that under the earlier system, students were being sent overseas at too young an age. In mid-1993 there were 72 scholarship students and trainees studying overseas (in Western Samoa, Tongo, Tuvalu, Niue, Solomon Islands, Fiji and New Zealand).

78. Adult learning centres have been established on each of the atolls. The centres offer programmes aimed at developing youth programmes and traditional skills, such as carving and weaving, as well as courses on specific trades, such as sewing, outboard motor maintenance, engineering and carpentry.

79. Teachers are being encouraged to upgrade their professional and academic skills through correspondence courses run by the University of the South Pacific Extension Service and through frequent in-service training. Two teachers are studying at the University of Auckland. Effort is being put into the development of women's and youth programmes, as well as sports programmes. New Zealand funding has helped youth groups produce newsletters.

Notes

1/ The information contained in the present paper has been derived largely from information transmitted to the Secretary-General by the Government of New Zealand under Article 73 e of the Charter of the United Nations on 6 March 1993 for the year ended 30 June 1992, and on 4 May 1994 for the year ended 30 June 1993.

2/ See Official Records of the General Assembly, Thirty-first session, Supplement No. 23 (A/31/23/Rev.1), vol. III, chap. XVII, annex, appendices I-IV.

3/ The Tokelau Amendment Bill, 1986, was enacted into law at the end of July 1986 (see A/AC.109/877/Add.1, annex V).

4/ Media release issued by the New Zealand Minister for External Relations and Trade, dated 22 December 1992.

5/ The local currency is the New Zealand dollar. As at 1 June 1992, $NZ 1.00 was equivalent to US$ 0.55.

6/ DP/CP/TOK/3, 26 February 1992: Third Country Programme for Tokelau, UNDP, p. 2.

Annex I

DELEGATION OF POWERS

I, LINDSAY JOHNSTONE WATT, the Administrator of Tokelau, do, pursuant to regulation 5 of the Tokelau Administration Regulations 1993 and from and including the 27th day of January 1994, **HEREBY DELEGATE** to the **GENERAL FONO** all the powers exercisable by me in respect of Tokelau under any enactment, including any power delegated to me under any enactment **PROVIDED HOWEVER** that this present delegation does not include any power delegated to me by the Minister of Foreign Affairs and Trade nor any power delegated to me under Part I of the Tokelau Amendment Act 1967 nor this my present power of delegation. In accordance with regulation 7 of the Tokelau Administration Regulations 1993, the **COUNCIL OF FAIPULE** may exercise any power delegated to the General Fono by this present delegation, in any case where the General Fono is not in session.

SIGNED this 27th day of January 1994.

L. J. Watt

Administrator of Tokelau

Administrator of Tokelau
Ulufakatonu o Tokelau

The General Fono and the Council of Faipule of Tokelau

A LETTER OF UNDERSTANDING CONCERNING THE DELEGATION TO YOU OF MY POWERS

Greetings!

The delegation of powers by me to you on 27 January 1994 was made under and is controlled by the law which is found in the Tokelau Administration Regulations 1993, a copy of which is attached to this letter.* The delegation includes general and specific powers. The general delegation is of an administration power which is to be used to ensure that the laws of Tokelau are followed and that everything possible is done for the peace and good order of Tokelau in accordance with government policy. Other functions of the office of Administrator of Tokelau (such as that of adviser to the Minister and adviser to Tokelau) are not affected by the delegation.

The general power will most commonly be used in the context of policy initiatives, policy formulation and expenditure priorities, and for ensuring that the departments of the Tokelau Public Service (TPS) give due attention in their work to the achievement of the policy goals set by the General Fono. Decisions will have to be made about which ideas are to be investigated, which proposals should be discussed by the General Fono and when and what matters should form part of the Budget. General decisions of this kind would have been taken in the past for example the airstrips idea, the building of the Tutolu, secondary schooling, village sanitation systems, housing systems, the village labour contract scheme.

The specific powers are at present mostly signing powers exercised on advice of the relevant TPS officer, or powers exercised necessarily in consultation with the New Zealand Government. It is expected the present patterns would continue in these areas and involve no resource for the Office of the Council of Faipule additional to that already in the TPS departments.

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* A copy of the Tokelau Administration Regulations 1993 has been placed in the files of the secretariat of the Special Committee and is available to the members of the Committee for consultation.

Stafford House, 40 The Terrace, Wellington. Private Bag 18 901, Wellington, New Zealand.
Phone 64-4 472 8877, Fax 64-4 472 9596

/...

The delegation of 27 January 1994 follows the pattern of delegation to successive Official Secretaries. The practice of the Administrator in respect of each Official Secretary was of non-intervention though the power to revoke or vary the delegation or to resume exercise of the powers was always there. The fulfilment of the roles of Official Secretary and Administrator was a cooperative activity in the interests of Tokelau.

The present delegation is, for the first time, to the representatives of Tokelau and no longer forms part of the employment relationship of a public servant to the Government. The delegation therefore has new aspects the full significance of which will be established by practice and consultation over time. It is my intention that this development through practice and consultation should be guided by the patterns of non-intervention and cooperation followed to this date.

In the exercise of the delegation it is understood that the General Fono and the Council of Faipule for their part will:

1 keep me informed, about the administration of Tokelau in accordance with the law, on a regular quarterly basis and as necessary;

2 consult me before acting in any matter with international implications or that will require the approval or assistance of the New Zealand Government. Special examples of such cases are found in the Police Regulations, the Post Office Regulations, the Shipping (Salvage) Regulations, the Fishing (EEZ) Regulations, and in the Finance Regulations.

It is understood similarly that the Administrator will:

1 inform the General Fono of policies of the New Zealand Government that may be relevant to Tokelau;

2 give advice as appropriate;

3 work with the New Zealand Government to advance matters of international interest to Tokelau;

4 in the case of emergency affecting Tokelau, act as necessary after such consultation as is appropriate in the circumstances;

5 be available on request to advise and support the General Fono and the Council of Faipule in the exercise of the delegated power.

This delegation is to be seen within the broader social, economic and political relationship of Tokelau and New Zealand. Tokelau is seen by the international community as a non-self-governing territory with the right to choose its future.

Tokelau is also under the Tokelau Act 1948 an integral part of New Zealand and Tokelauans are New Zealand citizens. Unlike other integral parts of New Zealand Tokelau has its own laws and its own developing internal government.

In this broader context it is therefore important to remember the general expectations the New Zealand Government has of its citizens. It expects that they will accept and live by international standards of behaviour supported by New Zealand. New Zealand has for instance very clear and strong views about respect for human rights.

These are matters on which I would be obliged to advise should occasion arise. This is also an area with possible significant consequences for the relationship of New Zealand and Tokelau. I would therefore trust that the holders of the power of delegation would also exercise their authority with this matter in mind.

It is noted finally that the delegation is made at a time when the TPS has been restructured, new directors appointed, and arrangements are being made for the base of Tokelau government matters to be in Tokelau. In that context an Acting Official Secretary/Transition Manager was appointed in 1993 to oversee these activities. That officer will continue in that role until the task is complete. In the interim period this delegation will operate subject to the powers of the Transition Manager.

As each new Director takes up office, the responsibilities of the Transition Manager for the department concerned will correspondingly reduce. The remaining responsibilities will relate to existing personnel: the transfer of personnel to different employers, severance moneys, and counselling and advice for staff affected by the transition. These duties will remain until reasonably fulfilled. During that period the Transition Manager will be based in the present office and accommodation in Apia and will report to and be responsible to the TPS Commissioners in the performance of his duties.

L. J. Watt

(Lindsay Watt)
Administrator of Tokelau

27 January 1994

Encl

Annex II

Message from the Ulu o Tokelau on the allocation of Ministerial Portfolios, 26 April 1994

I am pleased to inform you that as an interim measure, the Council of Faipule has decided to try the system of ministerial responsibility until the General Fono confirms its decisions on the allocation of departments on the three atolls, in the June General Fono. Though this is a temporary arrangement, the Council is taking this new responsibility very seriously. The current consultation process on the National Strategic Plan has been an excellent opportunity for the Council and Directors to work together and come to an understanding on how the detailed responsibilities of the Minister are performed. The Council is looking forward to the challenge but it still depends very much on the support and advice of Directors.

The allocation of departments is:

Faipule Keli Neemia

Office of the Council of Faipule
Public Works
Transport and Communications

Faipule Salesio Lui

Health and Environment
Administration and Finance

Faipule Lepaio Simi

Agriculture and Fisheries
Education

Note: the above message was transmitted to the Administrator of Tokelau.

UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/AC.109/1194
29 June 1994

ORIGINAL: ENGLISH

SPECIAL COMMITTEE ON THE SITUATION WITH
REGARD TO THE IMPLEMENTATION OF THE
DECLARATION ON THE GRANTING OF
INDEPENDENCE TO COLONIAL COUNTRIES
AND PEOPLES

WESTERN SAHARA

Working paper prepared by the Secretariat

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I. GENERAL

1. A detailed account of general conditions and developments relating to Western Sahara was provided in a previous working paper on the Territory (A/AC.109/695).

II. CONSIDERATION BY THE GENERAL ASSEMBLY AT ITS FORTY-EIGHTH SESSION

2. At the forty-eighth session of the General Assembly, reference was made to the question of Western Sahara by a number of representatives during their statements in plenary meetings (see A/48/PV.4-7, 10-13, 21-24 and 27). An account of the Fourth Committee's consideration of the item at the forty-eighth session is given in the related report of the Committee to the Assembly (A/48/656).

3. On 10 December 1993, on the recommendation of the Fourth Committee, the General Assembly adopted, without a vote, resolution 48/49 on the question of Western Sahara. The resolution reads as follows:

"The General Assembly,

"Having considered the question of Western Sahara,

"Reaffirming the inalienable right of all peoples to self-determination and independence, in accordance with the principles set forth in the Charter of the United Nations and in General Assembly resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

"Recalling its resolution 47/25 of 25 November 1992,

"Recalling also the agreement in principle given on 30 August 1988 by the Kingdom of Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro to the proposals of the Secretary-General of the United Nations and the current Chairman of the Assembly of Heads of State and Government of the Organization of African Unity in the context of their joint mission of good offices,

"Recalling further Security Council resolutions 621 (1988) of 20 September 1988, 658 (1990) of 27 June 1990, 690 (1991) of 29 April 1991 and 725 (1991) of 31 December 1991 relating to the question of Western Sahara,

"Recalling with satisfaction the entry into force of the cease-fire in Western Sahara on 6 September 1991, in accordance with the proposal of the Secretary-General accepted by the two parties,

"Noting the adoption by the Security Council on 2 March 1993 of resolution 809 (1993),

"Taking note of the letter dated 4 August 1993 from the President of the Security Council addressed to the Secretary-General, 1/

"Considering that the holding of talks between the two parties at Laayoune from 17 to 19 July 1993 is a positive development,

"Having examined the relevant chapter of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 2/

"Having also examined the report of the Secretary-General, 3/

"1. Takes note with appreciation of the report of the Secretary-General;

"2. Pays tribute to the Secretary-General and to his Special Representative for their action with a view to settling the question of Western Sahara by the implementation of the settlement plan;

"3. Reiterates its support for further efforts of the Secretary-General for the organization and supervision by the United Nations, in cooperation with the Organization of African Unity, of a referendum for self-determination of the people of Western Sahara, in conformity with Security Council resolution 658 (1990) and 690 (1991) by which the Council adopted the settlement plan for Western Sahara;

"4. Endorses the contents of the letter dated 4 August 1993 from the President of the Security Council to the Secretary-General 1/ in which the members of the Council, inter alia, fully supported the efforts of the Secretary-General to make swift progress on the preparations for holding a referendum in accordance with Council resolution 809 (1993), noted that the Identification Commission had begun its preparatory work, welcomed the reaffirmation by the two parties of their commitment to the implementation of the peace plan in its entirety, in particular their encouraging responses to the compromise proposal of the Secretary-General concerning the interpretation and application of the criteria, and shared his hope that direct talks between the two parties will soon resume;

"5. Requests the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to continue to consider the situation in Western Sahara, bearing in mind the ongoing referendum process, and to report thereon to the General Assembly at its forty-ninth session;

1/ S/26239.

2/ A/48/23 (Part V), chap. IX.

3/ A/48/426.

"6. Invites the Secretary-General to submit to the General Assembly at its forty-ninth session a report on the implementation of the present resolution."

III. GOOD OFFICES OF THE SECRETARY-GENERAL

4. An account of a series of contacts and consultations undertaken in 1993 by the Secretary-General in the exercise of his good offices, within the context of General Assembly resolution 47/25 of 25 November 1992, is given in his report of 27 September 1993 to the Assembly at its forty-eighth session (A/48/426). Since the circulation of that report, the Secretary-General, in close cooperation with the current Chairman of the Organization of African Unity (OAU), has continued to exercise his good offices with the parties concerned.

5. On 24 November 1993, in a report to the Security Council, 4/ the Secretary-General provided an account of the further efforts made by himself and his Special Representative since his last report in order to resolve the issues still standing in the way of the implementation of the settlement plan for Western Sahara. 5/

6. In his report, 4/ the Secretary-General indicated that after arriving in the mission area towards the end of May 1993, Mr. Erik Jensen, Chairman of the Identification Commission, and his team had held intensive discussions with the authorities of both parties on modalities which would enable identification and registration to proceed in a thorough and judicious manner. He also recalled that immediately following the direct talks at Laayoune from 17 to 19 July 1993, the Chairman had presented to both parties a proposed outline of a work programme and a draft registration form. After completing another round of discussions, the Chairman had put forward further firm proposals to both parties, including a revised timetable for the initial stages and a new registration form in Arabic/French and Arabic/Spanish versions.

7. On 17 October 1993, the Chairman had addressed a letter to the Government of Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO), confirming that the start of the operations would be announced on 1 November 1993 and that during the following days the population would be informed of the launching of the registration operations. Also, the revised lists of the 1974 census and the instructions for registration would be published and made available to the population, and the registration forms would be distributed.

8. According to the report of the Secretary-General, 4/ the launching of the process leading to identification and registration had been officially announced on 3 November 1993. Also, the revised lists of the 1974 census had been announced and made accessible to the population in Laayoune on 22 November. On the same day, the Frente POLISARIO, which had indicated its readiness to begin

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4/ S/26797.

5/ See S/21360 and S/22464 and Corr.1.

the process as soon as similar action was taken on the Moroccan side, had taken steps, in consultation with the Identification Commission, to make the revised lists available to the population in one refugee camp. It was further agreed with the Moroccan authorities that the registration forms would be distributed on 29 November 1993. According to indications received, similar action would have been taken by the Frente POLISARIO on that date.

9. In a previous report, 6/ the Secretary-General observed that the efforts made subsequent to Security Council resolution 809 (1993) of 2 March 1993 had led to the acceptance by the Frente POLISARIO of all the criteria for voter eligibility enunciated by his predecessor, thus signifying a favourable change in the earlier position of the Frente POLISARIO which had consistently objected to several of those criteria. In his report of 24 November 1993, 4/ the Secretary-General indicated that the deadlock had since shifted to their interpretation and application. While also accepting oral testimony in support of individual applications for participation in the referendum, the Frente POLISARIO had maintained substantial reservations on some other key provisions of the proposed compromise on the interpretation and application of the criteria for voter eligibility, and had requested amendments to the text. On the other hand, the Moroccan party stressed that, in spite of its reservations, it had acquiesced in the compromise in view of the authority vested in the Secretary-General by the settlement plan, and rejected any attempt at modifying the compromise text in its present form.

10. As a compromise, the Secretary-General proposed that the potential electorate encompass members of all the Saharan tribal subfractions, but only those which were represented in the 1974 census, regardless of the number of individuals from these subfractions who were counted in the 1974 census. 7/ All applicants for participation in the referendum would have to cross that first hurdle before claiming eligibility to vote under any of the pertinent criteria. That proposal, which took the 1974 census as the agreed benchmark, was in the view of the Secretary-General 8/ a sound point of departure for determining potential participation in the referendum, in the absence of an agreement on which specific Saharan tribal units were linked with the Territory. The Frente POLISARIO did not agree with that compromise, as it remained concerned about the possible inclusion, in the electorate, of members of some tribal units which it did not consider as existing in the Territory.

11. On 27 October 1993, the following statement was issued by the Spokesman for the Secretary-General: 9/

> "As announced last week, the two parties to the settlement plan for Western Sahara, Morocco and the Popular Front for the Liberation

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6/ S/26185.

7/ See S/26185, annex I.

8/ See S/26797, para. 27.

9/ See United Nations press release SG/SM/5142/Rev.1.

of Saguia el-Hamra and Río de Oro (Frente POLISARIO), were scheduled to resume, on 25 October in New York, direct talks initiated three months ago at Laayoune, with the Special Representative of the Secretary-General, Sahabzada Yaqub-Khan, as active United Nations observer. While the Memorandum of Understanding which laid down the ground rules for the talks gave to each party the right to choose the composition of its delegation, the presence of former Frente POLISARIO officials in the Moroccan delegation was not considered by the Frente POLISARIO delegation to be conducive to a propitious climate for dialogue, and the Frente POLISARIO delegation found it impossible to meet with the other party.

"The Secretary-General deeply regrets that the parties have not found it possible to accept any options offered by his Special Representative, in consultation with members of the Security Council, as possible ways of overcoming the procedural difficulties and enabling the resumption of direct talks. Nevertheless, he remains hopeful that a dialogue between the two parties may be resumed in due course.

"In the meantime, the Secretary-General, with the support of the Security Council, is determined to continue efforts for the implementation of the settlement plan and to proceed with the identification and registration of potential voters in the referendum of Western Sahara. At this critical juncture, he appeals to the two parties to do their utmost to live up to their obligations under the settlement plan."

12. In a letter dated 6 December 1993, 10/ the President of the Security Council informed the Secretary-General that the members of the Council had agreed that his compromise proposal (see para. 10 above) was a sound framework for determining potential participation in the referendum for self-determination of the people of Western Sahara as foreseen in the settlement plan. They welcomed his determination to move ahead and proceed with voter registration and identification. The members of the Council reaffirmed the role of the Secretary-General as guarantor of an objective and impartial referendum and expected any difficulties with the compromise to be resolved by early 1994.

13. In pursuance of Security Council resolution 809 (1993), his report to the Council of 24 November 1993 4/ and the letter addressed to him by the President of the Security Council dated 6 December 1993, 10/ the Secretary-General submitted a report to the Security Council on 10 March 1994, 11/ giving an account of subsequent developments.

14. In his report, the Secretary-General stated that pursuant to the letter of the President of the Security Council of 6 December 1993, his Special Representative, Sahabzada Yaqub-Khan, had visited the mission area from 2 to

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10/ S/26848.

11/ S/1994/283.

13 January 1994 for consultations with the parties and the neighbouring countries on the current situation and ways of resolving the remaining difficulties. At Marrakesh, he had been received by His Majesty King Hassan II of Morocco. In the area of Tindouf, he had met informally with Frente POLISARIO officials and was the guest of honour at a dinner hosted by the Secretary-General of the Frente POLISARIO, Mr. Mohammed Abdelaziz. At Algiers, he had held consultations with the Minister for Foreign Affairs, Mr. Mohamed Salah Dembri. At Nouakchott, he had been received by the President of Mauritania, Mr. Maaouya Ould Sid'Ahmed Taya; meetings had also been held with the Minister for Foreign Affairs and Cooperation, Mr. Mohamed Salem Ould Lekhal, and the Minister of Interior a.i., Mr. Ahmed Ould Minih. The Special Rapporteur had provided assurances to allay the concerns of the Frente POLISARIO that, on the basis of the compromise, thousands of individuals foreign to the Territory might be included in the electorate. Those assurances had been confirmed and further elaborated in a letter dated 4 February 1994 from the Special Representative to the representative of the Frente POLISARIO in New York, to follow up the explanatory note on the compromise that he had addressed to the parties on 27 September 1993. 12/

15. The Secretary-General recalled that a preparatory meeting between the Identification Commission and Moroccan officials, scheduled to be held on 25 October 1993 at Laayoune, had had to be postponed because its date coincided with the expected resumption of direct talks between the two parties in New York. As a result, the timetable the two parties had agreed upon, had had to be adjusted. As indicated above, the launching of voter registration and identification was officially announced on 3 November 1993 by the Chairman of the Identification Commission. The Chairman then held a further series of discussions in the course of that month with both parties to adhere as far as possible to the proposed timetable. During those consultations, both sides confirmed their intention to proceed expeditiously with the initial stage of the registration process in cooperation with the United Nations Mission for the Referendum in Western Sahara (MINURSO).

16. In late November 1993, the revised lists of the 1974 census, together with the supplement listing the names of additional persons expected to reach 18 years of age by 31 December 1993, had been made accessible at 10 different locations in Laayoune and at several places in the El-Aiun refugee camp in the Tindouf area.

17. The Secretary-General observed that the assurances that objectivity and sound judgement would govern the Identification Commission at every stage of its work had thus far proved to be insufficient to allay the concerns of the Frente POLISARIO over the compromise on the interpretation and application of the criteria and procedures for establishing the identity of potential voters, which he had presented to the parties during his visit to the mission area in early June 1993. 7/ In the meantime, the preliminary registration of applicants for participation in the referendum had proceeded in Laayoune and the Tindouf area. The completion of the identification and final registration of all eligible

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12/ Ibid., annexes I and II.

voters remained uncertain, however, in the absence of agreement by the Frente POLISARIO to the compromise as a whole.

18. The Secretary-General reported that during the four months preceding March 1994 he had held consultations at the highest level with the two parties, the two neighbouring countries and OAU, to find ways of settling the remaining difficulties. He remained confident that his proposals constituted a sound compromise and that they could be implemented in a fair and judicious manner.

19. The Secretary-General recalled that the settlement plan stated that the goal on which all were agreed was the holding of a free, fair and impartial referendum for the people of Western Sahara, organized and conducted by the United Nations in cooperation with OAU and without any military or administrative constraints. Four essential conditions had to be met for that goal to be achieved and for MINURSO to be able to carry out its responsibilities effectively and impartially: support and backing of the Security Council; full cooperation of the two parties; cooperation and support of the neighbouring countries; and the necessary financial resources.

20. Taking fully into account the observations set forth above, and in view of the decision to ensure that the referendum takes place without any further delays, the Secretary-General suggested in his report that the Security Council might wish, at the present stage, to consider the options set out below.

Option A

21. The Security Council would decide that the United Nations should proceed to hold the referendum regardless of the cooperation of either party. The process of identification and registration of all eligible voters should be completed on the basis of the compromise proposal of the Secretary-General, the terms of reference of the Identification Commission and the relevant provisions of the settlement plan.

Option B

22. The Security Council would decide that the Identification Commission should continue its work during a prescribed period. Meanwhile, the United Nations would continue its efforts to obtain the cooperation of both parties on the basis of the compromise proposal of the Secretary-General. At the end of the prescribed period, the Security Council would review the progress achieved and, on the basis of that review, would decide on the next course of action for the fulfilment of the United Nations mandate for Western Sahara.

Option C

23. The Security Council would conclude, on the basis of the report of the Secretary-General, that the cooperation of both parties in the completion of the registration and identification process could not be obtained at that time and would decide either that the whole MINURSO operation should be phased out within a given time-frame or that the registration and identification process should be suspended but that a reduced United Nations military presence should be retained to encourage respect for the cease-fire.

24. At its 3355th meeting, on 29 March 1994, the Security Council adopted resolution 907 (1994). The operative paragraphs of the resolution read as follows:

[The Security Council]

"1. Welcomes the report of the Secretary-General on the situation concerning Western Sahara of 10 March 1994;

"2. Welcomes the compromise proposal of the Secretary-General concerning the interpretation and application of criteria for voter eligibility (S/26185) as a sound framework for determining eligibility for participation in the referendum for self-determination of the people of Western Sahara; and takes note of the explanatory note of the Special Representative dated 27 September 1993, and the letter of the Special Representative dated 4 February 1994 included in the annexes to the Secretary-General's report of 10 March 1994;

"3. Expresses its deep concern over continuing difficulties and delays in the work of the Identification Commission;

"4. Agrees to the course of action as outlined in Option B in the Secretary-General's report of 10 March 1994, that the Identification Commission should complete the analysis of all applications received and proceed with the identification and registration of potential voters by 30 June 1994, on the basis of the Secretary-General's compromise proposal, the terms of reference of the Identification Commission, and the relevant provisions of the settlement plan; and supports the Secretary-General's intention to continue his efforts to obtain the cooperation of both parties on that basis;

"5. Requests, in this context, the Secretary-General to report to the Council not later than 15 July 1994 on progress achieved in the work of the Identification Commission as well as other aspects relevant to the fulfilment of the settlement plan with a view to deciding on further action necessary for fulfilment of the United Nations mission in Western Sahara;

"6. Urges strict compliance with the timetable for Option B as laid out in paragraph 24 (a) of the Secretary-General's report of 10 March 1994, with a view to holding the referendum by the end of 1994;

"7. Calls for full cooperation with the Secretary-General, his Special Representative and the Identification Commission in their efforts to implement the settlement plan, which has been accepted by both parties;

"8. Decides, in the event that the Secretary-General notifies the Council in the report called for in paragraph 5 above that the referendum cannot be held by the end of 1994, and in view of obligations of the parties to cooperate fully with the Secretary-General, to consider MINURSO's future, including an examination of options regarding its mandate and continued operations;

"9. Urges the Secretary-General, in the context of the implementation of paragraph 4 above, to make every effort to maintain MINURSO at the strength needed to carry out Option B, and further invites him to make proposals for the necessary adjustments to the present role and strength of MINURSO, as part of the report called for in paragraph 5 above;

"10. Decides to remain seized of the matter."

IV. POLITICAL AND OTHER DEVELOPMENTS

25. In a statement at the forty-eighth session of the General Assembly on 27 September 1993 (A/48/PV.4), Mr. Abdellatif Filali, Minister of State for Foreign Affairs and Cooperation of Morocco, said that with regard to the so-called question of Western Sahara, the settlement plan was being implemented and the Secretary-General continued to bring all new developments to the attention of the Security Council. The Kingdom of Morocco, which had always cooperated with the Secretary-General and had striven to facilitate his mission, had given its consent in principle to the compromise he had proposed in the interpretation and application of the criteria for voter eligibility. The Kingdom of Morocco was confident that the Secretary-General would not fail to inform the Security Council of Morocco's sincere and loyal cooperation and its constant readiness to implement the provisions of Council resolution 809 (1993) in all its aspects. It was in the same spirit of cooperation and reconciliation that Morocco had agreed to the Laayoune meeting of the previous July, where Saharans, in particular, from within the territory and from the region of Tindouf, had taken part and initiated a brotherly and positive dialogue.

26. Speaking as a petitioner at the 3rd meeting of the Fourth Committee on 12 October 1993 (see A/C.4/48/SR.3), a representative of the Frente POLISARIO said that after 10 years of war, the work of the United Nations and OAU had led to the drawing up of a settlement plan by both sides and by the Security Council. According to that plan, a referendum on self-determination was to be organized. The referendum scheduled for January 1992 had not been held, however. As soon as MINURSO had started the deployment of its observers, after the cease-fire of 6 September 1991, the Kingdom of Morocco had changed its position, calling into question the crux of the settlement plan, that is to say, the issue of the electorate for the referendum. In paragraph 61 of the plan, 13/ which both sides had negotiated and accepted, it had been established that all Western Saharans counted in the 1974 census undertaken by the Spanish authorities, and aged 18 years or over, would have the right to vote, whether currently present in the Territory or outside as refugees for other reasons.

27. The Moroccan side, however, had presented a list of 120,000 Moroccan citizens, double the number of the Saharan voters, and had demanded their participation in the referendum. Morocco had made and continued to make the implementation of the settlement plan conditional upon acceptance by the United

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13/ S/21360.

Nations, OAU and the Frente POLISARIO of a result that had been falsified in order to legitimize the illegal annexation of Western Sahara.

28. The representative of the Frente POLISARIO reiterated the Saharan people's deep respect for the letter and spirit of the settlement plan, as well as its willingness to continue cooperating with the efforts of the Secretary-General. It had been in the same spirit that the Frente POLISARIO had gone to Laayoune on 17 July 1993 in order to begin a direct dialogue with Morocco under the auspices of the United Nations.

29. The international community, the United Nations and OAU had an inescapable responsibility to support the peace effort, and the Saharan people trusted that all concerned would intensify their efforts to guarantee the right of that people to exercise its inalienable right to self-determination and independence.

30. It was essential for the referendum for self-determination that all guarantees should be provided in order for the result to be the free and sovereign expression of the people of Western Sahara.

31. At its 12th meeting, on 29 October 1993, the Fourth Committee adopted, without a vote, draft resolution A/C.4/48/L.4 on the question of Western Sahara. On 10 December 1993, on the recommendation of the Fourth Committee, the General Assembly adopted the draft resolution without a vote as resolution 48/49 (see para. 3 above).

32. In his statement at the opening session of the Special Committee on 15 February 1994, the representative of the Secretary-General said that Western Sahara continued to be of concern to the international community. The General Assembly, for the fifth time, had recently adopted a consensus resolution on the question. In that resolution, the Assembly, inter alia, took note of the progress made in the settlement of the issue and reiterated its support for further efforts on the part of the United Nations in the organization and supervision, in cooperation with OAU, of a referendum for self-determination of the peoples of Western Sahara, in conformity with Security Council resolutions 658 (1990) of 27 June 1990 and 690 (1991) of 29 April 1991. He expressed his firm belief that the unanimity over five consecutive years reflected the political will of the international community to bring about a final settlement of the conflict as quickly as possible (A/AC.109/PV.1429).

33. Moreover, the Security Council, which remained seized of the matter, was continuing to pay close attention to the development of the current diplomatic initiatives, on the basis of the reports that the Secretary-General was submitting at regular intervals. In his report of 24 November 1993, 4/ the Secretary-General had informed the Council of the reception given by the parties to the compromise proposals that he had put forward concerning the interpretation and application of the criteria governing eligibility to vote, which were set forth by his predecessor in his report of 19 December 1991 to the Security Council. 14/ Meanwhile, the Organization would continue

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preparations in the field for the organization of the self-determination referendum in 1994 (A/AC.109/PV.1429).

34. On 18 February 1994, the Commission on Human Rights, meeting at Geneva adopted, without a vote, resolution 1994/6 on the question of Western Sahara, which was similar in content to General Assembly resolution 48/49.

35. On 25 and 26 April 1994, the Deputy Special Representative of the Secretary-General for Western Sahara and Chairman of the Identification Commission met in the Tindouf area with senior representatives of the Frente POLISARIO. After a series of negotiating sessions, Mr. Mustafa Bachir Sayed, Deputy Secretary-General of the Frente POLISARIO and Coordinator with MINURSO, expressed the agreement of the Frente POLISARIO to proceed with the first steps of the referendum process in accordance with Security Council resolution 907 (1994) of 29 March 1994. Completed application forms would be made available to MINURSO during the month of May for preliminary analysis and to permit identification and registration to begin as of 1 June in accordance with the calendar set out in the report of the Secretary-General. 11/ On 27 April, the Chairman of the Identification Commission confirmed this understanding and the main elements agreed to in letters addressed to both parties. 15/

36. On 1 June 1994, the Chairman of the Identification Commission announced that the identification and registration of potential voters would begin on 8 June. The process of identifying applicants and registering those eligible to vote in the referendum of self-determination in Western Sahara would begin in the Territory itself and in the refugee camps at Tindouf. In a joint statement, Mr. Driss Basri, Minister of the Interior of Morocco, and Mr. Erik Jensen, Deputy Special Representative of the Secretary-General, said that registration of voters would start in a schoolhouse at Laayoune, the main town in the former Spanish colony. 16/

37. It was also reported on 1 June 1994 that a large number of applications had already been received from both sides. These persons were required to provide evidence establishing their identity and proof of eligibility to vote. The United Nations Identification Commission would verify the material offered as evidence before registering the eligible persons on a preliminary voters' list. 16/

38. The Eleventh Ministerial Conference of the Non-Aligned Countries, held at Cairo from 31 May to 3 June 1994, noted the developments in resolving the question of Western Sahara and reiterated the support of the Movement of Non-Aligned Countries for the efforts of the United Nations to organize and supervise a referendum in accordance with Security Council resolutions. 17/

15/ Reuters dispatch, Rabat, 28 April 1994.

16/ Reuters dispatches, Rabat, 31 May and 1 June 1994.

17/ NAC/M.11/DOC3/DRAFT/REV.2.